



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

DEVAL L. PATRICK
Governor

RICHARD K. SULLIVAN JR.
Secretary

KENNETH L. KIMMELL
Commissioner

February 7, 2014

Gregory J. Koldys, Esq.
Whiteside Koldys & Kelleher
449A Faunce Corner Rd
North Dartmouth MA 02747

RE: **NEW BEDFORD--BRP/WW**
Davy's Locker Restaurant
AMENDMENT TO ADMINISTRATIVE
CONSENT ORDER WITH PENALTY
ACOP-SE-11-6Y-003-AMEND#1


THIS IS AN IMPORTANT NOTICE.
FAILURE TO RESPOND TO THIS NOTICE
MAY RESULT IN SERIOUS LEGAL CONSEQUENCES.

Dear Mr. Koldys:

In connection with the referenced matter, enclosed is your client's copy of the fully executed Amendment to Administrative Consent Order #**ACOP-SE-11-6Y-003-AMEND#1**. The Consent Order contains a schedule of actions and deadlines which, if not adhered to, could render your client liable for stipulated and/or suspended penalties as described therein.

If you have any questions regarding this matter, please contact Senior Regional Counsel Shaun P. Walsh at the letterhead address or by calling (508) 946-2747.

Very truly yours,


Philip Weinberg
Regional Director

PW/SPW/
enclosure

cc: DEP-SERO

Attn: Shaun P. Walsh, Esq., Senior Regional Counsel
David Johnston, Deputy Regional Director, BRP
Jonathan Hobill, Regional Engineer, BRP

Elizabeth Kouloheras, Section Chief, Wetlands & Waterways Program
Carlos T.B. Fragata, Waterways Program
Patti Kellogg, BRP C&E
Lisa Ramos, C&E Program

DEP-Boston

Attn: Andrea Langhauser, Waterways Program
BAS

cc: New Bedford Conservation Commission
Attn: Sarah Porter, Agent
City Hall
133 William Street - Room 304
New Bedford MA 02740
Sarah.Porter@newbedford-ma.gov

IN THE MATTER OF:)
)
)
DAVY'S LOCKER, INC.)
)

No later than May 24, 2014, Respondent (or Respondent's successors and assigns if the Site is sold, conveyed, assigned or otherwise transferred prior to completion of the actions described herein) shall re-establish a dedicated perimeter pedestrian access walkway no less than five (5) feet in width that shall be located around the perimeter of the Site. This public access walkway shall connect with the East Rodney French Boulevard sidewalk at the southwest corner of the Site and shall allow the public unobstructed pedestrian access along the southern, eastern, and northern perimeter of the Site to the northeastern corner of the restaurant building, then along the eastern and southern sides of the restaurant building, reconnecting with the East Rodney French Boulevard sidewalk near the southwestern corner of the restaurant building. The public access walkway shall be outside of the "tiki bar" area that currently exists at the eastern side of the Site by moving the currently existing concrete barriers in from the Site

perimeter in order to establish the minimum five (5) foot wide perimeter walkway. The public access walkway shall be clearly delineated from other areas (e.g., parking areas) by painted asphalt surface, construction of boardwalk, installation of roped barriers, or other similar forms of demarcation. Respondent shall permanently post a sign at the southwest corner of the Site, unobstructed from the view of passersby, identifying the perimeter public access walkway using directional graphics, stating that the public may utilize the walkway from dawn to dusk and that the public access walkway is required by MassDEP pursuant to Waterways License No. 6504. The sign shall be constructed of durable materials, be a minimum of 18" by 18" in size with a minimum letter height of 1/2", and shall conform to all local laws and regulations. A minimum area of 5" diameter shall be reserved for an identifying MassDEP logo. Respondent shall maintain the sign in good condition and repair at all times.

3. Paragraph 15 of the Consent Order is hereby amended to state:

Respondent shall pay to the Commonwealth the sum of Eleven Thousand Five Hundred dollars (\$11,500.00) as a civil administrative penalty for the violations identified herein as follows:

A. Within thirty (30) days of the effective date of this Consent Order, Respondent shall pay to the Commonwealth Two Thousand dollars (\$2,000.00); and

B. MassDEP hereby agrees to suspend payment of the sum of Nine Thousand Five Hundred dollars (\$9,500.00); provided, however, that if Respondent violates any provision of this Consent Order, or further violates any of the regulations cited in Part II above within three (3) years of the effective date of this Consent Order, Respondent shall pay to the Commonwealth the remaining amount of Nine Thousand Five Hundred dollars (\$9,500.00) within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. This paragraph shall not be construed or operate to bar, diminish, adjudicate, or in any way affect, any legal or equitable right of MassDEP to assess Respondent additional civil administrative penalties, or to seek any other relief, with respect to any future violation of any provision of this Consent Order or any law or regulation.

3. This Amendment may be executed in multiple counterparts, each of which when executed and delivered to the Department shall be an original. All counterparts shall constitute one and the same instrument.

4. In all other respects, the terms and conditions of the Consent Order, including any previous amendments thereto unless amended by this Amendment, shall remain and continue in full force and effect.

In the Matter of: DAVY'S LOCKER, INC.

ACOP-SE-11-6Y-003-AMEND#1

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5. This Amendment to Administrative Consent Order ACO-SE-11-6Y-003 shall become effective on the date that it is executed by MassDEP.

Consented To:

DAVY'S LOCKER, INC.

By: 

JEFFREY DOLINSKY, PRESIDENT

Date: 1/31/14

Federal Employer Identification No.: 042393940

Issued By:

MA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 

Philip Weinberg, Regional Director
MassDEP-SERO
20 Riverside Drive
Lakeville MA 02347

Date: 2/7/14